



ATTACHMENT B

REMARKS

By this amendment, Applicants have amended the claims in a manner which now places this application in condition for allowance. In particular, the independent claims of the application have been amended to more distinctly claim the present invention in a manner which clearly distinguishes the invention from the cited prior art and in such a manner to avoid any objections to the language of the claims. The claims include only those additions disclosed with regard to the embodiments of the invention as set forth in pages 6-8 in particular, and thus these claims are supported in all cases by the original disclosure. In light of these amendments, the application is now allowable for at least the following reasons.

In the Official Action, the Examiner objected to the lack of an Abstract. However, this case is a National Stage application of an International application, and accordingly, pursuant to MPEP § 1893.03(e), the Examiner's objection is entirely improper and should be withdrawn.

In the Official Action, the Examiner objected to the Claims under 35 U.S.C. § 112, essentially on the basis that it was unclear to the Examiner how the repellents could prevent unspecified lice or other parasitic insects from any place other than the "already strip covered area"; that the materials could be potentially toxic or allergenic; and that the Examiner did not understand if a disease was being treated or if infestation was being prevented. These objections are respectfully traversed. In the present case, the Applicants' invention relates to a fabric base strip which is sewn inside of a garment and will have the localized effect of repelling lice or other potential parasites when the

insect repellent is controllably released from the carrier composition. The effects of the use of the insect repellent include the treatment of lice when present, i.e., the lice will be eradicated from the user, and/or the prevention of an infestation of lice. There is simply nothing in the claims which is unclear or which will not be completely apparent to one of ordinary skill in this art, nor is there any question that such a description is included in the present specification. Accordingly, there is nothing improper in the amended claims under Section 112.

Further, the Examiner has made several allegations regarding the potential that such a composition would be toxic or allergenic. As one example, the Examiner cites the specific embodiment of pyrethrum. Contrary to the Examiner's allegations, pyrethrum has now been well established as a non-toxic, non-allergenic insect repellent by virtue of a ten-year study of the subject by the EPA which found that, at levels commonly used in applications such as the present case, pyrethrum is not toxic or allergenic. Indeed, the specific levels utilized fall within the non-toxic range of use as specified in the present application and thus confirm this as a perfect example of a completely safe, non-toxic and non-allergenic insect repellent such as employed in the present invention.

Further, the Examiner's objections to the terms "room temperature", despite the fact that this term would be readily understood by one skilled in the art, have been traversed in that this term has been eliminated from the claims. Finally, the Examiner appears to object to the term "non-toxic" when in fact it is clear that the present application discloses the use of insect repellents in a non-toxic range as described in the specification. Moreover, numerous patents have been granted on applications

dealing with insect repellents, and in all of these cases it is clear that the intended use is of a non-toxic level of the repellent, and thus there have been no such restrictions on issuing claims in this area. Finally, it is also the case that Section 112, first paragraph, states, *inter alia*: “the specification shall contain a written description of the invention”, in order to comply with the written description requirement. However, the specification “need not describe the claimed subject matter in exactly the same terms as used in the claims; it must simply indicate to persons skilled in the art that as of the [filing] date the applicant had invented what is now claimed.” See All Dental Prodx, LLC and DMG Dental-Material Gesellschaft MBH v. Advantage Dental Products, Inc., 64 USPQ2d 1945 (Fed. Cir. 2002). The failure of a specification to specifically mention a limitation in specific words that later appears in the claims makes no difference when one skilled in the art would recognize upon reading the specification that the new language reflects what the specification shows has been invented. Id.

The All Dental Prodx court inferred from the specification at issue, what was disclosed, what was not disclosed, what the invention was, and what the invention was not. Based on the court’s review, it determined that the patent at issue involved and thus disclosed heating a thermal plastic mass having an unidentifiable form or shape even though the specification was silent as to whether the mass (form or shape) was or was not originally identified. Accordingly, the court concluded, that even though the original application as filed did not contain the phrase “original unidentified mass”, it would have been clear to one of ordinary skill in the art from the specification that the phrase “original unidentified mass” would be understood by one of ordinary skill in the art. Similarly, one of ordinary skill in the art would readily appreciate from the present

specification that it not only is intended that the compositions provide non-toxic levels of insect repellent, but that the actual amounts described and used in the application are indeed non-toxic.

In the Official Action, the Examiner also had claim rejections based on Page US Patent 246,335, and Tucci US Patent 6,015,570. These rejections, insofar as applied to the claims as amended, are respectfully traversed.

With regard to the Page patent, this reference does not disclose or suggest an invention such as the present one wherein a strip is provided inside a garment which will be utilized in the repelling of lice and other parasites when worn by the user. Instead, Page merely relates to a composition for preserving fabrics such as cloth or paper using a combination of naphthalene and paraffin wherein the materials are designed to be used for storage and not worn on the person. Moreover, the materials are applied directly to the fabric, and thus Page does not disclose or suggest a strip for a garment that will be placed inside the garment so that there will be controlled release of an insect repellent when faced with the body temperature of the human body. Since Page does not disclose or suggest use in apparel, there can be no disclosure or suggestion of controlled release of any ingredient at body temperature.

Similarly, the Tucci patent similarly does not disclose or suggest the presently claimed invention wherein a strip is provided inside a garment which will be utilized in the repelling of lice and other parasites when worn by the user whereby the insect repellent is controllably released by the user's body temperature. To the contrary, there is no disclosure or suggestion whatsoever in the Tucci patent which relates to an insect repellent composition which can be applied to fabrics, and not to a strip which can be

utilized inside of a garment and which will be responsive to body temperature in a manner to controllably release the repellent as body temperature is reached. Indeed, Tucci teaches away from the present invention because it encourages the lowering the loss of insect-repellants by adding multiple layers of laminates, and indeed applies insect repellent directly to fabrics, and not to a strip inside of a fabric. Clearly there is no disclosure or suggestion in Tucci of the application of a strip which is to be placed inside of a garment and which will controllably release insect repellent only when body temperature is achieved, i.e., when the garment containing the strip of the invention is worn by the user.

Accordingly, neither Page nor Tucci, either singly or in combination, disclose or remotely suggest the presently claimed invention, and the Examiner's rejections on the basis of these references, insofar as applied to the claims as amended, is respectfully traversed.

In light of the amendments and arguments as set forth above, Applicants submit that the present application overcomes all prior rejections and has been placed in condition for allowance. Such action is earnestly solicited.

END REMARKS